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April 21, 2004
**DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS**

Appeal

Case Name: Worker Appeal

Date of Filing: February 10, 2004

Case Number: TIA-0052

XXXXXXXXXXXXXXXXXX (the applicant) applied to the Office of Worker Advocacy of the Department of Energy (DOE) for DOE assistance in filing for state workers' compensation benefits. The applicant is the widow of XXXXXX XXXXXXXXXX (the worker), a former DOE contractor employee. Based on a negative determination from an independent Physician Panel, the DOE Office of Worker Advocacy (OWA or Program Office) determined that the applicant was not eligible for the assistance program. The applicant appeals that determination. As explained below, we have concluded that the appeal should be denied.

I. Background

The Energy Employees Occupational Illness Compensation Program Act of 2000 as amended (the EEOICPA or the Act) concerns workers involved in various ways with the nation's atomic weapons program. See 42 U.S.C. §§ 7384, 7385.

This case concerns Part D of the Act, which provides for a DOE program to assist Department of Energy contractor employees in filing for state workers' compensation benefits for illnesses caused by exposure to toxic substances at DOE facilities. 42 U.S.C. § 7385o. The DOE Office of Worker Advocacy is responsible for this program and has a web site that provides extensive information concerning the program.^{1/}

Part D establishes a DOE process through which independent physician panels consider whether exposure to toxic substances at DOE facilities caused, aggravated or

^{1/} See www.eh.doe.gov/advocacy.

contributed to employee illnesses. Generally, if a physician panel issues a determination favorable to the employee, the DOE Office of Worker Advocacy accepts the determination and assists the applicant in filing for state workers' compensation benefits. In addition, the DOE instructs the contractor not to oppose the claim unless required by law to do so, and the DOE does not reimburse the contractor for any costs that it incurs in opposing the claim. 42 U.S.C. § 7385o(e)(3). The DOE has issued regulations to implement Part D of the Act. These regulations are referred to as the Physician Panel Rule. See 10 C.F.R. Part 852. As stated above, the DOE Office of Worker Advocacy is responsible for this program.

The Physician Panel Rule provides for an appeal process. As set out in Section 852.18, an applicant may request the DOE's Office of Hearings and Appeals (OHA) to review certain Program Office decisions. An applicant may appeal a decision by the Program Office not to submit an application to a Physician Panel, a negative determination by a Physician Panel that is accepted by the Program Office, and a final decision by the Program Office not to accept a Physician Panel determination in favor of an applicant. The instant appeal is filed pursuant to that Section. Specifically, the applicant seeks review of a negative determination by a Physician Panel that was accepted by the Program Office. 10 C.F.R. § 852.18(a)(2). See *Worker Appeal* (Case No. TIA-0025), 28 DOE ¶ 80,294 (2003).

In her application for DOE assistance in filing for state workers' compensation benefits, the applicant asserted on the "Employment History Claim Form" that her deceased husband^{2/} worked at the DOE's Rocky Flats, Colorado from 1956 to 1981 as a security guard and foundry worker supervisor. The applicant stated further that during his 25 years of work service, her husband worked in close proximity to enriched uranium, plutonium, beryllium and americium, and was "contaminated many times." In her request to the Office of Worker Advocacy for Physician Panel review, the applicant claimed that her husband's renal disease, diagnosed in 1998, was caused by his work at the DOE facility.

The Physician Panel issued a negative determination on this claim. In evaluating the claim, the Panel considered not only the diagnosis of renal disease cited in the applicant's request, but each of the diagnoses identified as the worker's cause of death on his Death Certificate, including diabetes mellitus, renal insufficiency and hypertension. See note 2. The Panel found that none of these illnesses was "caused, contributed or aggravated by his working conditions." The Panel states in its report that: "[the worker] had numerous medical problems Most of these medical problems are quite common or known complications of common problems. There is no

^{2/} The record indicates that the worker died on December 11, 2001, at the age of 82. The worker's Death Certificate lists the causes of death as renal failure, hypertension and diabetes.

evidence from his radiation safety monitoring that he had an unsafe level of exposure that might account for any of his medical problems.” OWA Physician Panel Report (Report), issued November 4, 2003. The Panel’s decision was adopted by the Office of Worker Advocacy. Accordingly, the Office of Worker Advocacy determined that the applicant was not eligible for DOE assistance in filing for state workers’ compensation benefits. See Letter of December 30, 2003, from DOE to the applicant.

In her appeal, the applicant seeks review of the Physician Panel’s determination on the following grounds:

As noted in his records, [the worker] had psoriasis on 100% of his body, caused by the beryllium washes at Rocky Flats. Topical agents helped manage this slightly, never healing him completely. [The worker]’s records also show cancer in the side of his forehead and lip. These most likely were caused by chemical exposures at Rocky Flats.

You will also find in the records you currently have, the summary of event of the fire in Building 77 and the exposure of harmful chemicals to [the worker]. Many of his long term health problems most likely were a direct result of this exposure.

These matters are considered below.

II. Analysis

In her Appeal, the applicant claims that the Physician Panel improperly failed to consider two medical conditions suffered by the applicant, psoriasis and cancer. According to the applicant, the worker’s psoriasis covering his entire body was caused by “beryllium washes,” and the worker’s cancer on the side of his forehead and lip was caused by “chemical exposures.” Our review of the Report confirms that the Physician Panel did not evaluate these conditions as diagnoses “requested for review.” However, we do not find that the Panel erred in this regard.

In the Employment History Claim Form, the applicant stated that the worker had been exposed to a number of toxic substances, including beryllium. However, in her request to the OWA for Physician Panel Review, the applicant listed only renal disease, diagnosed in 1998, as an illness which she believed to be caused by the worker’s employment at a DOE facility. There is no indication in the OWA Case History that the applicant sought to supplement her request with the illnesses now raised in her Appeal. We therefore find that the Physician Panel properly limited its evaluation to the worker’s renal disease and two other illnesses, diabetes and hypertension, specified as causes of death in the worker’s Death Certificate, as the diagnoses “requested for

review.” The Panel determined that none of these illnesses was “caused, contributed to or aggravated by his working conditions.”

Finally, we note that while the Panel did not evaluate psoriasis or cancer as illnesses “requested for review,” it did generally consider the worker’s psoriasis condition. The Panel observed in its Report that the worker had “numerous medical problems . . . quite common or known complications of common problems,” and listed the following: congestive heart failure, aortic valve replacement, hypothyroidism, recurrent cellulitis, bladder tumor, coronary artery disease, psoriasis and osteomyelitis. Similar to the diagnoses requested for review, however, the Panel determined that “[t]here is no evidence from his radiation safety monitoring that he had an unsafe level of exposure that might account for any of his medical problems.”

We therefore conclude that the applicant’s Appeal does not establish any deficiency or error in the Panel’s determination. Because the applicant has not identified a deficiency or error in the Panel’s determination, there is no basis for an order remanding the matter to OWA for a second Panel determination. Accordingly, the Appeal should be denied.^{3/}

IT IS THEREFORE ORDERED THAT:

- (1) The Appeal filed in Worker Advocacy Case No. TIA-0052 be, and hereby is, denied.
- (2) This is a final Order of the Department of Energy.

George B. Breznay
Director
Office of Hearings and Appeals

Date: April 21, 2004

^{3/} If the applicant wishes to pursue the possibility of Physician Panel review based upon the additional claims raised for the first time in this Appeal, i.e. that the worker suffered from psoriasis caused by “beryllium washes” and cancer caused by “chemical exposures,” the applicant should contact the OWA.